# F.M.S. REPORTS.

[ORIGINAL CIVIL JURISDICTION]
Thomas, C.J.
July 20, 1937

## M. A. L. ALAGAPPA CHETTIAR
vs.
## COLLECTOR OF STAMP DUTIES, F.M.S.

[SELANGOR ORIGINATING SUMMONS No. 45 of 1937].

*Stamp Enactment (Cap. 135) Schedule A, Art. 28 (a)—dissolution of partnership—consent order—partnership property in one partner's name—division of partnership assets in specie—financial adjustments for equalisation of shares—other consideration—transfers of land to individual partners— stamp duty—adjudication.*

The plaintiff and 2 others were partners in equal shares in a firm known as K.V.A.L.A.L. Differences having arisen between them and proceedings having been instituted in the Supreme Court, a dissolution of partnership was agreed on and a deed of dissolution entered into. It was not in dispute that certain lands and securities though held by A.C. one of the partners had been purchased with partnership assets or otherwise acquired in the course of the partnership business.

By a consent order made in the action for accounts, etc., it was ordered *inter alia* that the lands and securities be divided amongst and transferred to the members of the firm in accordance with the Schedules to the deed of dissolution.

To carry out the terms of the deed of dissolution it was necessary for certain transfers of land to be made and one of these was presented for adjudication of stamp duty. The Collector of Stamp Duties adjudicated on the basis that *ad valorem* duty was payable on the value of the property transferred. The terms of the dissolution went beyond the mere partition of the partnership assets and involved the withdrawal of certain suits.

*Held*, that the transaction between the partners not being merely a partition of the partnership assets since other extraneous matters had been taken into account, the transfer presented for adjudication did require to be stamped with an *ad valorem* duty.

ORIGINATING SUMMONS.

The facts were set out on Affidavit and were not in dispute. Most of the lands and other assets stood in the name of the senior partner A.C. The Deed of Dissolution provided for the division of the assets between the three partners in accordance with the three schedules thereto, for the payment by one partner to the others of $1,569.24 and $1,109.73 for equalisation of shares, for certain other payments and adjustments in respect of salary overdrawn and the like, and for the withdrawal of the suits for dissolution of partnership instituted in the Supreme Courts of the Federated Malay States, the Colony of the Straits Settlements and the State of Johore and of a suit in India. By consent an Order was made by this Court in the Suit for Dissolution declaring that the properties in the Schedules to the Deed of Dissolution were held in trust for the partners and ordering that they be divided among and transferred to the partners as in the Deed provided.

A transfer of one of the pieces of land was submitted for adjudication of stamp duty. The value of the land was agreed at $11,200. The consideration stated in the transfer was "in order to give effect to an Order made by the Supreme Court of the Federated Malay States at Kuala Lumpur on the 5th day of February 1937 in Civil Suit No. 134 of 1936."

*V. Mackie* for Alagappa Chettiar. The transaction is not a conveyance on sale, but either (1) a partition (2) an exchange or (3) a conveyance of a kind not otherwise specially charged with duty.

It is the instrument and not the transaction which is liable to duty. *Commissioners* v. *Angus*, (1889) 23 Q.B.D. 579. *Stanway* v. *Collector of Stamp Duties*, (1931) 2 F.M.S.L.R. 239. But consideration and all relevant facts must be disclosed, Stamp Enactment Cap. 135 Sec. 11. Full disclosure is made by the Affidavit, Deed of Dissolution and Order.

The substance of the transaction must be looked to, and the inclusion of supplementary provisions for small cash adjustments and the like, do not alter the substance.

When a partner leaves a firm, he gets the value of his share in some form or other. Either the continuing partners retain the partnership assets intact, and pay him the value of his share in money or money's worth, in which case the transaction is a sale of the retiring partner's share; or the retiring partner accepts his share of the partnership property and departs, in which case the transaction is not a sale. The present case is stronger, for there are no continuing partners, no partner is bought out, but each departs with his share of the assets *in specie*.

No exactly parallel authority has been found. The nearest is *MacLeod* v. *Commissioners*, (1885) XII Ct. Sess. Cas. 1045. There a retiring partner accepted on retirement a mortgage which constituted one of the firm's assets and was worth almost exactly the value of his share, a small further sum being paid to him in cash to equalise the shares. The conveyance of this mortgage was held not to be a conveyance on sale and not to be liable to *ad valorem* duty.

In *Christie* v. *Commissioners*, (1886) L.R. 2 Exch. Cases 46 the retiring partner was bought out by the continuing partner paying him £10,000 in cash and giving him a mortgage for £100,000 over certain assets of the Firm. The firm's assets were left with the continuing partner and the transaction was thus a sale of the retiring partner's interest therein.

*Phillips* v. *Commissioners*, (1867) L.R. 2 Exch. Cases 399 differed from *Christie's* case in that the consideration was "expressed to be" part of the partnership assets. It was held to be not distinguishable. This case appears to be against me. It was considered in *MacLeod's*

case. The report is very short and uninformative. There is nothing to shew that the consideration was found to be part of the assets of the firm. The consideration was "the sum of £17,313" and it seems improbable that a firm would have so large a sum in liquid cash.

*MacLeod's* is the later case, and establishes that a transaction such as that now under consideration is not a sale.

A partition under the Stamp Enactment is not confined to land. "Instrument of partition" is defined in section 2 as any instrument whereby co-owners of any property divide or agree to divide such property in severalty. Property is defined in the same section as including movable and immovable property.

The present transaction is a partition somewhat similar to that in *Henniker* v. *Henniker*, (1852) 1 Ellis & Blackburn 54, and the transfer now under consideration is one of the supplementary instruments chargeable with a duty of fifty cents under Sec. 9 of the Stamp Enactment. The Deed of Dissolution has been stamped with Five dollars, which is the duty chargeable on the principal instrument of partition.

Alternatively the transaction when viewed as a whole might be construed as an exchange, each partner exchanging his interests in certain lands for his partners' interests in others. In that event the principal instrument is liable to duty under Article 37 of the Schedule to the Stamp Enactment, and the transfer now under consideration is liable to a duty of fifty cents under Section 9. Under Article 37, *ad valorem* duty is payable on only approximately half of the value of the total lands concerned, and the Appellant would be entitled to a refund of the difference between this and the *ad valorem* duty on two-thirds of the value of the total lands concerned, as now paid.

Alternatively if the transfer is not an instrument for carrying out a partition or an exchange it is a conveyance of a kind not otherwise specially charged with duty, and liable under Article 28 (e) to a duty of five dollars. For it can come under no other part of Article 28, if on the authority of *MacLeod's* case, it is found not to be a conveyance on sale.

*Adrian Clark* (Legal Adviser) for the Collector of Stamp Duties:—

There was a plaint asking for dissolution, for an account and that each party should pay in any balance due from him. This suit was settled by the so-called "deed of dissolution" which shows not a mere partition but a complicated adjustment of accounts including liabilities to be paid by each partner separately. The "deed" was in fact a mere agreement requiring to be implemented by the Order of Court and by transfers in addition. The Government is not estopped by anything in the "deed" or Order to which it was not a party. Neither "deed" nor Order of itself vested any property in any person. Separate transactions by way of transfers were necessary for this purpose. The Order merely ordered the registered owner to transfer certain lands to other parties to the suit in lieu of ordering him to pay them the sum due from him on the agreed account.

In the English Acts "Exchange" includes "Partition." Ours is essentially different having separate items for "Exchange" and for "Partition" the latter, in the case of land, being confined to partitions under the Land Code. Under section 9 of Cap. 135 the principal instrument here chargeable with duty is the transfer since that only could give effect to the intentions of the parties. Cf. second paragraph of section 10(i). On dissolution of partnership each partner is entitled not to any specific "partnership property" but only to a sum of money representing his share of the value of the balance of assets over liability. Normally all assets must be sold and the proceeds distributed in cash. In the present case one partner, being registered not as trustee for the partnership but as sole and absolute owner of lands, would as a result of any dissolution be found accountable to each of his partners for a sum of cash. Instead of selling the lands to strangers to pay this debt he sells to his partners in consideration of the debt he owes them (Cap. 135 section 17) and *ad valorem* duty is therefore payable. Alternatively if all should be treated as co-owners in equity of each piece of land then this is an Exchange, each partner receiving the whole property in one piece of land in exchange for transferring his one-third share in each of two other pieces of land to each of his two other partners respectively. Duty would then be payable under Article 37 (instead of under Article 28). I submit it does not come under Article 50 but if it could be brought within terms of that Article it certainly comes within Article 37 also and Government has in that case the right to choose under which Article it will levy duty. In *McLeod's* case (the *ratio decidendi* of which I do not admit to be correct and which has never been followed) the substantive transaction was that already effected, i.e. the transfer of the investment of £8,000 by an instrument which had been separately and fully stamped; the instrument before the Court for adjudication was a mere memorandum of what had been done and it effected and conveyed nothing.

In the course of his argument the Legal Adviser referred to the following cases and authorities:—

*Rigden* v. *Pierce*, (1822) 6 Maddock 353.
*Hankins* v. *Clutterbuck*, (1848) 2 Car. & Kir,

810 (Markie).

*Henniker* v. *Henniker*, (1852) 1 Ell & Bl 54.

*Potter* v. *Commissioners*, (1854) 10 Exch 148

*Darby* v. *Darby*, (1856) 3 Drew 503. 106 R.R. 408.

*Christie* v. *Commissioners*, (1866) L.R. 2 Exch Cas. 46.

*Phillips* v. *Commissioners*, (1867) L.R. 2 Exch Cas. 399.

*Freeman* v. *Commissioners*, (1871) L.R. 6 Exch Cas. 101.

*McLeod* v. *Commissioners*, (1885) XII Sessions Cas. 1045.

*Commissioners* v. *Angus*, (1889) 23 Q.B.D. at 589.

*Troup* v. *Commissioners*, (1891) 7 T.L.R. 610.

*John Foster & Sons Ltd.* v. *Commissioners*, (1894) 1 Q.B. 516.

*Huntington* v. *Commissioners*, (1896) 1 Q.B. 422.

*J. & P. Coats Ltd.* v. *Commissioners*, (1897) 2 Q.B. 423.

*Chesterfield Brewery* v. *Commissioners*, (1899) 2 Q.B. 7.

*Garnett* v. *Commissioners*, (1900) 81 L.T. (Q.B.) 633.

*Marquess of Bristol* v. *Commissioners*, (1901) 2 K.B. 336.

*Re Yap Ah Loy's Estate*, (1904) Innes 125.

*Dawson* v. *Inland Revenue Commissioners*, (1905) 2 L.R. 69 Dig. 39 p. 281.

*A. G.* v. *Felixstowe Gas etc.*, (1907) 2 K.B. 984.

*Speyer Bros.* v. *Commissioners*, (1908) A.C. 92.

*Re Eng Joo Estate*, (1910) Innes 121.

*In re Seafield Rubber Co., Ltd.*, (1920) 2 F.M.S.L.R. 234.

*Stanway Ltd.* v. *Collector*, (1932) F.M.S.L.R. 239.

*Singapore Improvement Trust* v. *Comr. of Stamps*, (1937) 6 M.L.J. 107.

*Alpe* on Stamp Duties (27th edition).

*Pollock* on Partnership (9th edition).

*Lindley* on Partnership.

Contract Enactment (Cap. *52*).

Stamp Enactment (Cap. *135*).

Land Code (Cap. *138*).

**THOMAS, C.J.**—In this Originating Summons M. A. L. Alagappa Chettiar is the plaintiff and the Collector of Stamp Duties, Federated Malay States is the defendant.

The question which the Court is asked to determine is what amount of stamp duty is payable on a transfer of Selangor Certificate of Title No. 1055 made in favour of the plaintiff and dated the 6th of March 1937.

By agreement between the parties no oral evidence has been called in this matter, but instead an affidavit sworn by the plaintiff on the 30th of March 1937 together with the exhibits thereto was accepted as a statement of the facts. From this affidavit it appears that the plaintiff together with an uncle and a cousin were partners in a firm known as K.V.A.L.A.L; that the three partners have at all times held one share each in the partnership, and that there has been no change in the membership of the firm. The firm is now in course of dissolution.

Disputes arose between the partners, and proceedings were instituted in the Supreme Court. Subsequently a dissolution was agreed upon, and a deed of dissolution was entered into. A copy of the deed of dissolution was filed in Court, and a consent order was made on the 5th of February 1937, whereby it was declared that Alagappa Chettiar, the plaintiff in Civil Suit No. 134 of 1936 held certain lands and securities in trust for the partners of the firm; and it was further by consent ordered that these lands and securities should be divided amongst and transferred to the members of the firm being the parties to the deed of dissolution.

Before going further I would wish to draw attention to the confusion arising from the names employed by Indian firms. I have had to comment on this in a recent case. I note in the present case that all three partners are called Alagappa Chettiar, and whilst the plaintiff in C.S. No. 134 of 1936 was named in the title as Alagappa Chettiar alias Narayanan Chettiar son of Alagappa Chettiar, he is now named A. L. A. L. Alagappa Chettiar son of Alagappa Chettiar. I feel that there is something extremely unsatisfactory in all these variations of initials and aliases, and I desire to emphasise the inconvenience that they cause even where the parties are honest. I would suggest that the time has come when persons carrying on business in Malaya should be required to register themselves with a complete list of all their varying initials and aliases.

To resume. In the affidavit it is explained that the declaration in the Order dated the 5th of February 1937 was due to a custom existing amongst Chettiars of registering all lands in the name of the senior partner without the addition of the words "as trustee." I am not able to say that any such custom has been proved before me. But I am prepared to accept the statement in the present case that lands and securities acquired by the moneys of the firm were registered in the name of the uncle without the addition of the words "as trustee."

Now, in order to carry out the terms of the "deed of dissolution" it was necessary for certain transfers to be made, and one of these was presented for adjudication of stamp duty. The consideration was stated as being:—

> " in order to give effect to an order made by the Supreme Court of the Federated Malay States at Kuala Lumpur on the 5th day of February 1937 in Civil Suit No. 134 of 1936."

The Collector adjudicated on the basis that *ad valorem* duty was payable on the value of the property under Article 37 (Exchange) or Article 28(a) (conveyance on sale) of Schedule A of the Stamp Enactment.

The duty demanded was paid under protest. In his affidavit the present plaintiff states that he has been advised that the instrument is a conveyance of a kind within the meaning of Article 28(e), and as such is liable to stamp duty in the sum of five dollars only. It is not suggested that *ad valorem* duty has been paid either on the "deed of dissolution" or on the Order of Court dated the 5th of February 1937.

The questions therefore for my decision are:—

1. what is the nature of the transaction between the parties; and
2. under what Article if any of the Stamp Enactment is it chargeable with duty.

In the course of the argument for the plaintiff it was contended as an alternative to the transaction coming under Article 28(e) that it might come under Article 50 relating to an instrument or partition as to which the stamp duty is five dollars. It was also contended for the plaintiff that if it should be held that there was in fact an exchange, then, only half the duty should be paid instead of 2/3rds duty. It appears, however, that the reduction of the duty to 2/3rds was in consequence of the partner in whose name the land was registered being excused from the payment of his one-third, the reason for which is obscure.

Now, the law relating to partners in the Federated Malay States is contained in Chapter XI of the Contract Enactment. Section 263 provides that after a dissolution of partnership the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership. Section 253 provides rules determining the relations of partners to each other in the absence of any contract to the contrary.

And section 253 (a) sets out that:—

> " all partners are joint owners of all property originally bought with the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business."

Assuming that all the lands and securities were bought with money belonging to the partnership, then they would belong equally to the three partners.

There is no section of the Contract Enactment corresponding to section 22 of the English Partnership Act, 1890. But in England even before the passing of that Act the preponderating conclusion was that land should be treated as money as between the partners.

And in *Pollock's* Indian Contract Act 16th edition, at page 704 it is stated that the only conclusive measure of a partner's share is what he is entitled to claim on the termination of the partnership or could at any given time claim if the partnership had at that time to be wound up and its assets realised and distributed.

And such was the opinion of Kindersley, V.C. in his judgment in the case of *Darby* v. *Darby*, 61 E.R. page 992, at page 995.

> " I should therefore feel no hesitation in coming to this conclusion that the mere contract of partnership, without any express stipulation, involves in it an implied contract, quite as stringent as if it were expressed, that, at the dissolution of the partnership, all the property belonging to the partnership, whether it be ordinary stock in trade, or a leasehold interest, or a fee simple estate in land, shall be sold and the net proceeds, after satisfying all the partnership debts and liabilities be divided among the partners; and that each partner, and the representatives of any deceased partner, have a right to insist on this being done."

So it is clear that on a dissolution of this firm the partners were entitled to have the assets sold and the proceeds equally distributed amongst them in cash. Such a proceeding might have been financially expensive and undesirable, and no doubt it would be wiser that some sort of an agreement should be arrived at whereby any sacrifice of the value of the estate on a sale might be avoided.

It may, however, be that all the funds of a partnership have already been converted into money. In such a case it is clear that all that would be necessary for each partner to do would be to take his share of the money and give his receipt for it. Nothing further would be necessary. There would be no need for a deed, and there would be no stamp duty to be paid. And so with regard to a retiring partner it was cited with approval by Darling, J. in *Garnett* v. *Commissioners of Inland Revenue*, 81 L.T. R.P. 633, at page 636:—

> " For my own part, I think it is perfectly good law as stated by the present Master of the Rolls in his text book:
>
> > 'if a retiring partner, instead of assigning his interests takes the amount due to him from the firm and gives a receipt for the money and acknowledges that he has no more claim on his co-partners, they will practical-

ly obtain all they want.'

Well that might be done without any deed at all and it is perfectly possible that it might be done: and that a deed might afterwards be drawn up which would not in any way do it but record it; and in that way such a deed as that might not require an *ad valorem* stamp."

Now a Scotch case has been cited (*McLeod* v. *Commissioners of Inland Revenue*, 12 Court of Sessions, 1045) which it is suggested carries the division of the assets of a partnership a stage further. In that case one partner retained all the property of the company which was necessary for carrying on the business and the other had assigned to him a heritable security and a sum of money. It is not clear what amount of stamp duty had been paid on the transfer of the bond, but it is stated that the formal assignation in respect thereof had been adjudged duly stamped. If the amount paid was on an *ad valorem* basis, the importance of this case would seem to disappear, since the matter which was decided by the case was not whether the *ad valorem* stamp duty was to be paid on the assignation of the bond to Mr. Wilson, but on the arrangement which had been embodied in a deed of assignation in favour of McLeod. Now, there was no antecedent contract produced in Court as to the nature of the transaction, and it was treated as a partition or division of the assets of the partnership into two equal portions.

But whilst doing so the Court was careful not to disagree with the principle laid down in *Christie's* case to which I will refer shortly, and in fact the Lord President (Inglis) states that he proposes 'to adopt that principle in the present case,' and then the Lord President cites Kelly, C.B. as follows:—

"In all those cases it appears to me that the substance of the transaction is alone to be considered upon the question whether the instrument is liable to the stamp duty under the Statute, and the substance of this transaction collected from the pleas certainly seems to me to be a sale by Mr. Black to Mr. Christie of Mr. Black's interest in the partnership property for the sum of £110,000."

Therefore in the Scotch case the Court came to the conclusion that the substance of the transaction was one of division and not a sale.

The simplicity of the transaction may have enabled that decision to be made. And the transaction might possibly come within the language of Darling J. which I have cited above. The decision, however, accepts the principle laid down in *Christie's* case which is reported in 2 Exch. Cases, page 46. In that case on a dissolution one of the partners received a sum in cash and the remaining value of his share (which had been ascertained) was made up by the assignment of certain policies of insurance. It would not seem in that case that there had been any division of the property of the partnership at all. Channell, B. said in the course of his judgment:—

"All that has been done in this case seems to me to have been to ascertain what would be the fair sum for the one party to receive and for the other to give, so that the retiring partner might relinquish all his interest in the business, and the entire property might vest in the other party."

In both the Scotch case and in *Christie's* case there was one partner who was continuing the business, so that there was existing one person who might be alleged to be buying the assets of the partnership.

In the case at present under consideration not one of the partners is continuing, but each of the partners is entitled to carry on business on his own account.

There is one other matter in *Christie's* case which I wish to cite. It is contained in the judgment of Kelly, C.B. at page 51, and is as follows:—

"Now certain cases have been referred to by Mr. Williams which he contends either establish a different principle or tend to a different conclusion. He has referred to the well-known case in which partnership property, although it may consist in part, or else wholly of real estate, is as between the partners upon a dissolution, or any other settlement that may take place between them, dealt with not as land, but as money. The fact is, that case is only the same as the case of land devised to be sold to be converted into money, when that is assumed to be done which is directed by will to be done, and the property is treated as money. But on the sale of such a property, who can doubt that the conveyance by which it is sold would be subject to an *ad valorem* stamp duty in reference to the amount of the consideration for the purchase and sale?"

From what I have written I conclude that on a dissolution of a partnership each of the partners is entitled to the share of the partnership assets; that division of the land belonging to the partnership may be made *in specie*.

And so in the present case if there had been a clear division of the landed properties without anything further, then I might be prepared to say that, in spite of the magnitude of the estate, there had been a division of the assets of the partnership by which each partner took his share not in cash but in portions of the real estate, any slight difference being adjusted by a cash payment.

In all these cases it is not the transaction of purchase and sale which is struck at; it is the

instrument whereby the purchase and sale are effected which is struck at. And if any one can carry through a purchase and sale without an instrument, then the legislature has not reached that transaction. The taxation is confined to the instrument whereby the property is transferred. (see *Commissioners of Inland Revenue* v. *Angus*, 23 Q.B.D. 579, at page 589).

But in order to enable the instrument to be properly understood the substance of the transaction must be considered. (*Christie's* case).

In the present case if there has been a valuation it has not been disclosed to the Court. But it was stated by the Legal Adviser in the course of his argument that the correspondence showed that the total assets of the firm were said to be $750,000 and the share of each partner $250,000, and that the liabilities to be met by each partner were $80,000. In the deed dated the 2nd of February 1937 it is stated that disputes and differences had arisen between the partners, and that three suits had been instituted in the Federated Malay States, the Straits Settlements and the State of Johore. These claimed a dissolution, an order for accounts and other relief.

The deed goes on to recite that in order to avoid the expense of taking accounts certain terms of settlement had been arranged. Then follow the terms of settlement. The real estate of the partnership is divided according to the schedules amongst the partners. Arrangements are made for the payment of sums of money in order to adjust differences between the portion of the estate taken by the individual partners. A sum of $16,618.50 paid in respect of estate duty and debited to one of the partners is to be treated as a debt of the firm. Sums of $3,000 are to be paid to two of the partners by the third in respect of salary and bonus. And:—

> "upon the completion of the distribution of the assets M. A. L. Alagappa Chettiar shall forthwith withraw the suit No. 105/36 which he has instituted in the sub-court at Devakkota, South India, against the said A. L. A. L. Alagappa Chettiar and A. L. R. M. Alagappa Chettiar in terms that no order be made as to the costs of that suit."

In my opinion the terms of the deed indicate something different from a straightforward dissolution of a partnership and a division of the assets *in specie*, with financial adjustments, of the partnership. What all those matters or their exact nature are the Court is not informed. Whether the Indian suit which has been compromised related to the partnership or extraneous matters is not known, nor is it known what was the extent or magnitude of that suit.

I am satisfied that the transaction between the partners was not merely a partition of the partnership assets but something more, and was in fact an agreement to settle or adjust claims and matters extraneous to the partnership. The deed of the 2nd of February and also the Order of the Court giving force to that agreement were not conclusive, and required to be completed by transfers to give effect to the agreement which had been arrived at. It is not a question whether the agreement or the Order of the Court required to be stamped, but whether the individual transfers required to be stamped with *ad valorem* duty. I can only come to one conclusion that having regard to the instrument itself and also having regard to the nature of the transaction, the transfer presented for adjudication did require to be stamped with *ad valorem* duty. And the same will apply to all other transfers which may be presented to give effect to the deed of settlement.

Such being my opinion I will deal very shortly with the other suggestions raised before me. As I have said, this is not a division of the partnership property since other extraneous matters have been taken into account. I am also satisfied that the transaction cannot be called a partition for the reasons I have already given. I am tempted to ask of what it is a partition. Of real estate? But the real estate was partnership property, and I have already shown that it must be regarded as money. And since extraneous matters have been introduced, if this is to be regarded as a partition, then every agreement for a settlement would have to be regarded as a partition. But even then when as a term of the partition real estate is to be transferred, *ad valorem* duty would have to be paid.

The expression 'partition' is generally understood to relate to the division of land amongst persons entitled to shares of that land. Each may take an individual portion instead of having an undivided interest in the whole. Section 44 of the Land Code provides for partition being made either by agreement or in the absence of agreement by the Court. 'Partition' has been described by Kelly, C.B. in the course of his judgment in *Christie's* case, at page 51:—

> "It only remains to refer to the third case which has been put to us, namely, the case of partition. Now, a partition is totally unlike a sale and purchase of a landed estate. Persons who have some interest in property held under a tenancy in common, or in any other joint manner or character, are very frequently content to take something far less in value than the interest which they possess in the common property in order that what they are possessed of they may possess in severalty, independently of all other persons."

A suggestion has been made that the transaction might be regarded as an exchange. But having regard to the whole transaction and not to any

individual portion of it I fail to see how in any way it can be described as an exchange. It seems to me to be impossible to exchange the right to carry on a suit in India for various interests in landed property. Such of course may be the subject of an agreement. But when transfers have to be given to carry the agreement into effect, then they must be stamped with *ad valorem* duty for such real estate has been sold in consideration of the abandonment of the suit.

Therefore in my view it is unnecessary to pursue the figures which have been submitted as showing the correct proportion of duty payable on an exchange.

And lastly it has been suggested that the transaction comes within Article 28 (e) as being a conveyance of any other kind not otherwise specifically charged with duty. But as in my view there has been a sale under Article 28 (a), then Article 28 (e) cannot apply. And on each transfer that is required the proper consideration is not as has been expressed, namely:—

> " in order to give effect to an order made by the Supreme Court of the Federated Malay States at Kuala Lumpur on the 5th of February 1937 in Civil Suit No. 134 of 1936"

but the actual value of the property which is being transferred.

It may be that the properties which Alagappa Chettiar alias Narayanan Chettiar son of Alagappa Chettiar is to obtain, being already in his name, require no transfer, and it may be that it is on this account that they have been exempted from duty. But as to this it is not necessary for me to give an opinion.

Therefore the answers to the questions which I have put to myself are, that the nature of the transaction between the partners is one of conveyance on sale, and comes under Article 28 (a) of the Stamp Enactment. The answer to the question submitted by the Originating Summons is, that the amount of stamp duty payable on the transfer of Selangor Certificate of Title No. 1055 made in favour of the plaintiff and dated the 6th of March 1937 is to be calculated under Article 28 (a).

In view of the agreement which has been arrived at between the parties there will be no order for costs.

*Appeal dismissed.*

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